

US EPA ARCHIVE DOCUMENT

24 August 1999

Attn: Docket No. F-1999-NEUP-FFFFF

University of Wisconsin-Madison Comments on EPA's Proposed
Project XL Site-Specific Rulemaking for University Laboratories
(64 FR 40695-40715)

RCRA Information Center Docket Clerk (5305W)
U.S. Environmental Protection Agency (EPA, HQ)
401 M Street, SW
Washington, D.C. 20460

Dear Environmental Protection Agency,

The University of Wisconsin*Madison (University) submits the following comments on U.S. Environmental Protection Agency's (EPA) proposed rule for Project XL Site-Specific Rulemaking for University Laboratories. The notice was published in the 27 July 1999 Federal Register (64 FR 40695-40715). As a preeminent educational institution with thousands of laboratories and a \$400 Million annual research budget (third in the nation), our information and suggestions may be valuable to EPA.

Comment Summary

We strongly support this proposal's intent to provide regulatory flexibility to the participating institutions. We wish to encourage these institutions in their pursuit of environmental excellence and appropriate alternative hazardous waste regulations for laboratories. There is great promise in an integrated, flexible, performance-based approach to managing hazardous waste in university laboratories.

This rulemaking acknowledges that laboratories differ significantly from production facilities, for which most EPA rules are written. As noted in the Federal Register, laboratories generate small amounts of multiple wastes on a noncontinuous basis. As a result, RCRA not only hinders the important work of laboratories, but laboratory compliance with the current requirements is extremely difficult. Over the last two decades, EPA, states and educational institutions have spent considerable resources attempting to resolve laboratory waste compliance issues. Both the EPA and the National Research Council have documented that EPA regulations can be unreasonable and inefficient in a laboratory setting.(1)

The proposed performance-based management system will actively promote prudent practices and encourage pollution prevention, chemical reuse and recycling. We

agree with EPA that the proposed rule should result in superior environmental performance for the participating universities. Most importantly, we are certain that the project will be protective of human health and the environment.

UW-Madison Concerns on the Proposed Rule

We fully understand that this proposed rule applies only to the four participating institutions, and was designed to address their specific concerns. We strongly support their exploration into alternative hazardous waste regulations for laboratories. We expect the Project to be successful and to influence changes in EPA's regulation of universities and laboratories. With that in mind, we believe that it would be inappropriate to view this rulemaking as a model for all universities or all laboratories. Indeed, because this project is designed to address the concerns of these specific universities, their states and their EPA Region, it would be erroneous to assume that this is the best approach for solving RCRA problems at other educational institutions. Some of our concerns include:

An EMP Is Not Appropriate for Many Laboratories

The rule draws heavily from ISO 14000, which requires an Environmental Management Plan (EMP). The ISO 14000 standard is designed for industry and, in our view, fits academia poorly.

An EMP does not ensure environmental compliance, and ISO 14000 clearly does not purport to do so. In some cases, an EMP may not improve environmental performance.

40 CFR 265.105(b)(2) requires that the EMP include "an environmental policy, or environmental, health and safety policy, signed by the university's senior management, which must include commitments to regulatory compliance." Such a policy is inappropriate and ineffective in an institution with faculty governance and decentralized administration, which is a characteristic of many institutions of higher education, including our University. While a central administration policy of this type may be workable within the governance setting of the participating institutions, its adoption at our University would require arduous and time-consuming concurrence of one or more faculty committees, and possibly the deans.

Section 262.105(b)(6) of the proposed rule requires within the EMP, "a pollution prevention plan, including, but not limited to, roles and responsibilities, training, pollution prevention activities, and performance evaluation."

Requiring a separate EMP and pollution prevention plan is duplicative.

Conceptually, an EMP should be an integral part of every pollution prevention plan, or visa versa.

Avoid Adding New and Inordinate Burdens

Compared to existing RCRA rules, it appears that this rule imposes a heavy recordkeeping and documentation burden on the participating institutions in exchange for limited relief from inappropriate regulations. Providing "objective evidence and records of training and information dissemination" for all laboratory workers and designated laboratory visitors (such as vendors and contractors) is one example of excessive documentation. Section 262.105 has many other examples of burdensome recordkeeping.

Strive for Consistency with Existing Laboratory Law

The rule should draw more heavily on the successful performance-based OSHA laboratory standard (29 CFR 1910.1450), which is considered by many to be the most effective and efficient model for regulating laboratories. Unlike the laboratory-specific OSHA standard, however, EPA's proposed rule requires a centralized, institutional EMP. As a result, the EMP will have to address site-specific questions across the campus.

At a minimum, EPA should be consistent with OSHA's policies. Please explain how the proposed rule would address production labs (e.g., certain clinical labs), which are excluded from the OSHA lab standard. While the OSHA standard generally excludes photography "labs" (even if associated with a laboratory department) their treatment under the EMP is unclear.

Avoid Inefficiencies Caused by Exceptions

The applicability of the rule is limited to specific departments. Anything less than campus-wide applicability means that the institution must operate under two sets of complicated rules with attendant opportunities for error and misunderstanding.

Other Specific Concerns and Comments

The training requirements contain no recognition of previous training outside the institution, nor do the requirements recognize that training may not be necessary for certain "qualified" individuals.

The proposed rule makes no provision for recycling of chemicals between nearby laboratories, which is an efficient waste minimization practice that precedes RCRA. As the proposal is written, everything that is waste from a laboratory must go to the central accumulation area for evaluation and recycling.

We support the rule's implicit acceptance of the "laboratory management unit" concept. Under the concept, benchtop waste treatment would no longer be regulated under EPA's hazardous waste rules. Laboratories have the expertise

necessary to safely prevent pollution by reducing the volume and/or toxicity of their waste at the point of generation.

Please state the criteria and timetable for evaluating the Project, and the standards EPA will use to determine to expand or cancel it.

We have other concerns that are not detailed here.

Include Congressional Directives for Lab Reform

Although this proposed rule provides limited relief for in-lab treatment and accumulation, we are disappointed that this proposed rule does not earnestly address the concerns of educational and research laboratories described in the House Report (103-555) accompanying the VA, HUD, and Independent Agencies FY 1995 Appropriations Act (P.L.103-327). The House Report directed EPA to consider the following three RCRA adjustments to ensure efficient educational and research laboratory operation:

Allow educational and research laboratories to perform some on-site treatment of limited quantities of their waste;

Increase the amount of time that a laboratory may accumulate limited quantities of its waste without the need of a permit; and

Allow single EPA identification numbers to be used for the contiguous portions of a college or university campus.

This language was developed at the behest of the American Chemical Society (ACS) and a coalition of more than eighty universities, private laboratories, and businesses across the country. The need for these reforms is documented in the aforementioned references. However, EPA has yet to amend RCRA regulations. This rulemaking is a great opportunity to thoroughly address the Congressional directives.

In this proposal, EPA should explicitly advocate in-lab treatment to prevent pollution. The proposed 30 day extension of the removal deadline for satellite accumulation areas is helpful, but EPA should grant a conditional exemption for very small volume laboratory waste that, due to limited commercial disposal sites, must be shipped separately from other wastes. For example, every 90 days many laboratories must ship a few bottles of certain wastes to one of the few sites that accept that waste type. These small volume shipments are very inefficient and result in transportation costs and risks that greatly exceed the costs and risks of storage or disposal.

Support Other Approaches to Appropriate Regulation

EPA should also recognize that some institutions have achieved superior environmental performance through the regulatory flexibility provided by EPA and state guidance, interpretations, enforcement discretion, site-specific agreements and targeted rulemaking (e.g., the 1997 Military Munitions Rule). We believe that much of this proposed rule would not be necessary if EPA or the states in which the participating institutions are located would be more reasonable in their application of RCRA in laboratories.

We encourage EPA to sustain its reinvention initiatives for storing mixed low-level radioactive waste and streamlining the permitting of RCRA storage and simple treatment facilities.⁽²⁾ None of these changes weaken environmental protections. In fact, these approaches enable hazardous waste generators to reallocate resources for environmental improvements.

Conclusion

In conclusion, the University supports EPA's proposed rule. We believe it can provide results that are superior to those provided by the current regulatory framework. Following the certain success of this pilot, we hope EPA will encourage broader proposals and be even more flexible in helping make RCRA work optimally in laboratories. As EPA exercises its regulatory flexibility, generators will reach ever higher environmental performance.

Thank you for considering our comments, and for providing the University the opportunity to comment on this proposed rule. Should you have questions after you've had an opportunity to review this letter, please contact Peter A. Reinhardt, UW-Madison Safety Department, at (608) 262-8769.

Sincerely,

Bruce Braun
Assistant Vice Chancellor

c: David Drummond, Safety Department Director
William Sonzogni, Chair, University Chemical Safety Committee

(1) Report to Congress: Management of Hazardous Waste from Educational Institutions. U.S. Environmental Protection Agency, National Technical Information Service-Documents PB89-187-629 (April 1989) and National Research Council. Prudent Practices in the Laboratory (Washington, DC, National Academy Press, 1995).

(2) See 64 FR 10064 and www.epa.gov/permits/papmem.htm for EPA's Action Plan for

Achieving the Next Generation in Environmental Permitting.